

I.R. NO. 93-9

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF WARREN,

Respondent,

-and-

Docket No. CO-93-177

CWA, AFL-CIO,

Charging Party.

SYNOPSIS

The Communications Workers of America sought to restrain the County of Warren from implementing a new vehicle policy which required employees to leave their assigned County cars at the County facilities, rather than driving the cars home at night. Since the assignment of vehicles is non-negotiable, the Application was denied.

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Appearances:

For the Respondent  
Stiles & Wallace, attorneys  
(David A. Wallace, of counsel)

For the Charging Party  
Steven P. Weissman, attorney

INTERLOCUTORY DECISION

On November 19, 1992, the Communications Workers of America filed an unfair practice charge with the Public Employment Relations Commission alleging that Warren County engaged in an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5)<sup>1/</sup> when during the course of negotiations for a successor agreement to the current contract which is to expire on December 31, 1992, the County

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

implemented a new vehicle policy. Under the old policy nurses represented by the CWA were permitted to drive their cars home at the end of the workday. Under the new policy, employees were required to leave their cars at the County facilities and to use their own vehicle at the beginning and end of the workday.

The unfair practice charge was accompanied by an application for interim relief. An order to show cause was issued and made returnable for December 3, 1992. A hearing was conducted on that date. The parties requested and were granted time to file supplemental briefs which were received by December 22, 1992.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.<sup>2/</sup>

In Morris Cty. Park Comm., P.E.R.C. No. 83-31, 8 NJPER 561 (¶13259 1982), aff'd App. Div. Dkt. No. A-795-82T2, 10 NJPER 103

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2/ Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

(¶15052 1984), the Commission addressed the issue of use of employer vehicles for commutation. The Commission held that the employer Morris Cty. had the non-negotiable right to reduce the size of its vehicle fleet and to that end the assignemnt of such vehicles is non-negotiable. But, Morris Cty. had an obligation under the facts of that case to negotiate with the Association for an alternate form of compensation for the effected employees.

The CWA here, argues that the Morris Cty. case is distinguishable. These employees did not use the County cars for commuting. From the moment they left their homes at the beginning of the workday until they returned to their homes at the end of the workday, the nurses were on work time. Further, these employees were on call 24 hours-per-day. Nor, is it argued, was this new policy implemented to reduce the size of the vehicle fleet as in Morris Cty.

The County argues that the goal of this new policy was to reduce the size of the vehicle fleet and that the factual differences between this matter and Morris Cty. are immaterial.

CWA has not met its heavy burden here. I cannot say that it has a substantial likelihood of success in prevailing before the full Commission. Although there are significant factual differences between this matter and Morris Cty., I cannot say that there is a substantial likelihood that the Commission will find those factual differences warrent a finding that these factors create an exception and find the assignment of County vehicles negotiable.

The application of interim relief is denied.

  
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Edmund G. Geber  
Commission Designee

DATED: December 24, 1992  
Trenton, New Jersey